

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

JAMES F. BUCKMASTER,

Defendant.

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CASE NO. 1:06-CR-0038

ORDER AND OPINION
[Resolving Doc. No. 26]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Before the Court is Defendant James F. Buckmaster’s motion to stay execution of his sentence pending appeal to the Sixth Circuit [Doc. 26]. The United States opposes the motion [Doc. 28]. For the reasons described below, the Court GRANTS the Defendant’s motion.

I. Background

On April 3, 2006, the Defendant pled guilty to receiving explosive material through interstate commerce without a federal license, in violation of 18 U.S.C. §§ 842(a)(3)(A) and 844(a)(1). (Plea Agreement ¶ 3.) This plea agreement followed this Court’s ruling that the explosives, found by firefighters responding to a fire in the Defendant’s house, were admissible. (*See generally* Order Den. Mot. Suppress.) With the Government’s consent, the Defendant reserved the right to appeal, among other things, this Court’s ruling on his motion to suppress the seized evidence. (Plea Agreement ¶ 12.) Accordingly, on June 27, 2006, the Court sentenced the Defendant to twelve months incarceration and three years supervised release and imposed \$3100 in fines and special assessments. (Sentencing J. 1-3.) On June 30, 2006, the Defendant appealed the Court’s ruling to

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the Sixth Circuit, and on July 5, 2006, he filed the present motion. On July 21, 2006, this Court granted the Defendant a stay of execution of his sentence until August 24, 2006 so that the Court could consider the motion.

II. Legal Standard

A sentencing court may choose to grant a defendant's motion to stay execution of a sentence pending appeal under 18 U.S.C. § 3143(b), so long as (1) the court is satisfied that the defendant does not present a risk of flight or danger to the public, and (2) the defendant presents a substantial question on appeal. *Id.* § 3143(b)(1). The defendant must prove that he does not present such risks by clear and convincing evidence. *Id.* § 3143(b)(1)(A). Additionally, the appeal must raise a "close question or one that could go either way," the resolution of which "is so integral to the merits of the conviction that it is more probable than not that reversal or a new trial will occur if the question is decided in the defendant's favor." *United States v. Pollard*, 778 F. 2d 1177, 1182 (6th Cir. 1985) (internal quotations omitted). The Court applies this standard to the present facts.

III. Discussion

A. Risk of Flight or Danger to the Public

The Court is satisfied that the Defendant does not present a risk of flight or danger to the public. The Court demonstrated its security in the Defendant's trustworthiness by releasing him on unsecured bond and allowing him to travel outside of the district during the pendency of the proceedings. (*See* Mar. 3, 2006 Order; *see also* June 22, 2006 Order.) The Defendant responded with full cooperation throughout the trial process. The United States did not object to the Court's leniency during the trial proceedings, and does not offer any evidence suggesting that the Defendant has not fully cooperated thus far. Finally, the Defendant has no known history of criminal or violent

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behavior, nor any other behavior presenting a threat to the public. The United States does not argue otherwise. Accordingly, the Court holds that the Defendant has satisfied his burden of clear and convincing proof and finds that he does not present a risk of flight or public danger.

B. Substantial Question on Appeal

On appeal, the Defendant intends to challenge the Court's ruling admitting the explosives seized from his basement. Essentially, the Court held that *Michigan v. Tyler*, 436 U.S. 499 (1983) and *United States v. Urban*, 710 F. 2d 276 (6th Cir.1983) permitted law enforcement agents to seize the explosive materials after the fire without a warrant because the agents were investigating exigent circumstances. (Order Den. Mot. Suppress 8.) The Defendant disagrees, arguing that *Michigan v. Clifford*, 464 U.S. 287 (1984) requires the Court to suppress the seized materials because the agents' search was not strictly limited to the cause of the fire. (Mot. Stay 2-3.) This Court held that *Tyler* and *Urban* protect the agents' actions in this case despite *Clifford*. (Order Den. Mot. Suppress 6-8.)

Despite this Court's ruling, the Defendant's appeal presents an important question: the scope of permissible law enforcement investigations when "exigent circumstances" and "continuing dangers" are present. *See Tyler*, 436 U.S. at 510, 514. To the Court's knowledge, the Sixth Circuit has not yet resolved this particular question. Accordingly, the Court finds that the Defendant presents a substantial question for review on appeal.

The Court likewise finds that the Defendant's question on appeal satisfies the final requirement. If the Sixth Circuit resolves the admissibility question in the Defendant's favor, reversal is virtually certain. Accordingly, the Court holds that the Defendant satisfies the requirements of Section 3143(b)(1)(B).

Moreover, if the Court denies the Defendant's motion, he would likely complete his twelve-

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month prison sentence before the Sixth Circuit hears his appeal. The United States argues that the case is on the accelerated docket and that the time frame therefore should not influence the Court's resolution of this motion. However, considering the relatively short term of imprisonment, it is exceedingly unlikely that even an accelerated appeal will take place before the Defendant has served at least half of his sentence. As discussed above, Court is satisfied with the Defendant's reliability. Therefore, the Government would suffer little prejudice if the motion is granted, but the Defendant may potentially suffer significant prejudice if it is denied and the Court's suppression ruling is overturned.

IV. Conclusion

As described above, the Court finds that the Defendant presents no risk of flight or danger to others, and that his appeal presents a substantial appellate question whose resolution is integral to the merits of the conviction. Accordingly, the Court **GRANTS** the Defendant's motion to stay execution of his sentence pending his appeal.

IT IS SO ORDERED.

Dated: August 2, 2006

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE